

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

RETAIL GROUND AND PARCEL SELECT GROUND
SERVICE STANDARD CHANGES, 2022

Docket No. N2022-1

**NOTICE OF UNITED STATES POSTAL SERVICE OF FILING
OF LIBRARY REFERENCES AND APPLICATION FOR NON-PUBLIC TREATMENT**
(March 21, 2021)

In accordance with Rule 3010.125(d-e), the United States Postal Service (Postal Service) hereby provides notice today that it is filing one public library references and five non-public library references to support its direct case and to aid the Postal Regulatory Commission's consideration of the Postal Service's Request for an advisory opinion in this docket. The Preface filed with each library reference reflects the information specified in Rule 3010.125(d) and is incorporated herein by reference.

Public

	<u>Title</u>	<u>Witness</u>
USPS-LR-N2022-1-1	Cost Information	Bozzo

Non-Public

	<u>Title</u>	<u>Witness</u>
USPS-LR-N2022-1-NP1	Market Analysis	Jarboe
USPS-LR-N2022-1-NP2	Commercial Shipper Survey	Jarboe
USPS-LR-N2022-1-NP3	Mail Processing and Transportation Cost Information	Bozzo
USPS-LR-N2022-1-NP4	Service Standard Impact Analysis	Bray

An application for non-public treatment and protective conditions for materials within the non-public library references listed above is attached to this Notice.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Richard Cooper
Managing Counsel
Corporate and Postal Business Law

Anthony Alverno
Chief Counsel, Global Business & Service
Development

C. Dennis Southard IV
Christopher O'Connell
Andrew Pigott
Attorneys

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1135
(202) 341-6419
Andrew.L.Pigott@usps.gov
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APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT

In accordance with 39 C.F.R. § 3011.201, the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed under seal with the Commission. The materials covered by this application include the following library references:

USPS-LR-N2022-1-NP1, "Market Analysis";

USPS-LR-N2022-1-NP2, "Commercial Shipper Survey";

USPS-LR-N2022-1-NP3, "Mail Processing and Transportation Cost Information";

and

USPS-LR-N2022-1-NP4, "Service Standard Impact Analysis."

For the reasons stated below, the Postal Service respectfully requests that this application be granted, and the identified library references deemed non-public and sealed.

- (1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials.**

The materials in support of this filing include a number of different types of commercially sensitive information. Certain of the materials designated as non-public consist of market research developed by external research firms and procured by the Postal Service. Other materials include commercial information about postal operations and competitive products, such as disaggregated volume data about competitive products, as well as data concerning transportation modes and associated costs of those products. Some materials also contain disaggregated cost information regarding mail processing and purchased transportation for competitive products transported by various carriers, as well as the per-unit cost to the Postal Service of using selected carriers to

transport such mail and packages.

This is information that, under good business practice, would not be disclosed publicly. Based on its long-standing and deep familiarity with postal and communications business and markets generally, and its knowledge of many firms, including competitors, mailers, and suppliers, the Postal Service does not believe that any commercial enterprise would voluntarily publish detailed confidential market research, nor detailed information pertaining to its operations, its competitive products, nor disaggregated volume data. In the Postal Service's view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and (c)(5) and 5 U.S.C. § 552(b)(3).¹

- (2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of this section (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual.²**

¹ In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 4679, Order Adopting Final Rules Relating to Non-Public Information, Docket No. RM2018-3 (June 27, 2018) at 16 (reconfirming that the adopted final rules do not alter this long-standing practice); PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

² Section 3011.201(b)(2) further states the following:

(i) If the submitter has a proprietary interest in the information contained within the materials, identification of an individual designated by the submitter to accept actual notice of a motion related to the non-public materials or notice of the pendency of a subpoena or order requiring production of the materials.

(ii) If any person other than the submitter has a proprietary interest in the information contained within the materials, identification of each person who is known to have a proprietary interest in the information. If such an identification is sensitive or impracticable, an explanation shall be provided along with the identification of an individual designated by the submitter to provide notice to each affected person.

(iii) If both the submitter and any person other than the submitter have a proprietary interest in the information contained within the non-public materials, identification in accordance with both paragraphs (b)(2)(i) and (ii) of this section shall be provided. The submitter may designate the same individual to fulfill

a. The Postal Service has a proprietary interest in the information contained within the non-public materials. The Postal Service designates Dennis Southard to accept actual notice of a motion related to the non-public material or notice of the pendency of a subpoena or order requiring production of the materials. Dennis Southard's email address is dennis.southard@usps.gov, and his telephone number is 202-628-6284.

b. The Colography Group has a proprietary interest in the information contained within the 'Colography DQM Methodology Proprietary' document within USPS-LR-N2022-1-NP1. The Colography Group designates Alex Millians to accept actual notice of a motion related to the non-public material or notice of the pendency of a subpoena or order requiring production of the materials. Alex Millians' email address is 'wamillians@colography.com', and his telephone number is 678-385-2500 x113.

c. Federal Express has a proprietary interest in information that could be used to estimate unit cost per cubic foot charged by it for air transportation of mail. James H. Ferguson, Corporate Vice President, is designated to accept notice on behalf of FedEx. Mr. Ferguson's phone number is 901-434-8600 and his email is 'jhferguson1@fedex.com.'

(3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the information at issue, would allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials are non-public.

The "Market Analysis" was prepared for the Postal Service by The Colography Group, which was retained by the Postal Service to evaluate the overall size and direction of the market for shipping packages. The analysis contains quarterly, disaggregated volume data for packages shipped Nationally (by pieces) for USPS and its principal

the requirements of paragraphs (b)(2)(i) and (ii) of this section.

competitors, along with information concerning market growth and market share. In addition, The Colography Group research methodology and proprietary data models included in the Library Reference are a fundamental piece of intellectual capital to The Colography Group. The corresponding detail, competitive assumptions, and market expertise has evolved over a 20+ year period and are of high internal value to the Company.

The “Commercial Shipper Survey” presents and analyzes the results of a survey conducted by an outside firm retained by the Postal Service. As it bears on the proposal to enhance Retail Ground (RG) and Parcel Select Ground (PSG) service, the purpose of the Survey is to evaluate the potential role and market attractiveness of price relative to speed of delivery as a product option in the full-network, commercial shipping portfolio. The survey includes information regarding customer behavior with respect to Postal Service products that are subject to competition.

The “Mail Processing and Transportation Cost Information” library reference includes mail processing and transportation costs for Parcel Select Ground, Retail Ground, and First-Class Package Service. The data and information contained in the library reference include commercially sensitive and confidential: volume information and billing determinants for competitive products; estimates of mail processing and transportation unit costs for competitive products used to develop cost impacts due to the implementation of proposed service standard changes for PSG and RG; and labor productivity data related to competitive product processing. In addition the Library Reference includes information that could be used to reveal the unit pricing of air transportation by a supplier.

The “Service Standard Impact Analysis” library reference has eight files in its root folder. These files contain data that reveal disaggregated volumes, piece count data, modes of transportation, transportation windows for competitive products, and First-Class air lanes. The purpose of these materials is to estimate the volumes of RG and PSG that will be diverted from the surface to the air transportation network under the planned service standard changes; and also to present the volume migrations by service standard that will result from the planned service standard changes.

(4) Particular identification of the nature and extent of the harm alleged, and the likelihood of each harm alleged to result from disclosure.

If the information the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, the Postal Service considers it quite likely that it would suffer commercial harm. This information is clearly commercially sensitive to the Postal Service, and the Postal Service does not believe that it would be disclosed under good business practice. In this regard, the Postal Service is not aware of any business with which it competes (or in any other commercial enterprise), either within industries engaged in the carriage and delivery of packages, or those engaged in communications generally, that would disclose publicly information and data of comparable nature at a disaggregated level and with the details furnished here.

The data and information considered to be non-public consists of: (i) proprietary market research information, research methodology, and proprietary data models; (ii) volume information and billing determinants for competitive products; (iii) the modes of transportation and transportation windows for competitive products; (iv) estimates of mail processing and transportation cost impacts due to the implementation of proposed

service standard changes for PSG and RG; and (v) labor productivity data related to competitive product processing.

The Postal Service, which currently engages and will continue to engage in contracts for air and surface transportation services, has a strong interest in being able to obtain the best prices possible. Revealing the Postal Service's cost and volume data with respect to certain transportation suppliers has the potential for interfering with the procurement process and defeating the Postal Service's interest in obtaining beneficial arrangements. Transportation suppliers could potentially use the transportation cost and volume information to seek higher prices for the services they provide. Public disclosure would, accordingly, undermine the procurement process.

Disclosing the volume, mode of transportation, and transportation window data for competitive products – *i.e.*, a category of postal products for which similar products are offered by private sector carriers – would unfairly, to the economic detriment of the Postal Service, permit competitors to:

- gain specific insight into modes of transportation, customer usage patterns, and level of performance;
- better gauge the size of the competitive product market in specific service areas; and
- develop strategies for determining what marketing resources to devote to further penetration of specific local markets.

Disclosing the market research information pertaining to Postal Service customer behavior could provide insight to Postal Service competitors who seek to attract the business of those same customers. Postal Service competitors could use such information to position their products in such a way as to compete unfairly against the Postal Service. Further, competitors able to view the market research materials would gain specific insight into Postal Service customer behavior and the broader market share

information, enabling them to capture the benefit of market research in which the Postal Service has invested without any need to procure their own market research.

(5) At least one specific hypothetical, illustrative example of each alleged harm.

Harm: Public disclosure of transportation costs for certain suppliers, together with the weight and volume information, would provide transportation suppliers extraordinary negotiating power.

Hypothetical: An air transportation supplier or its representative obtains a copy of the unredacted version of Library Reference USPS-LR-N2022-1-NP3. The supplier has already been in negotiations to provide air transportation services to the Postal Service and has determined an appropriate price to fit the supplier's cost structure. The supplier sees the Postal Service's average per-pound transportation costs and uses that information as a justification for pricing demands in negotiations. The Postal Service's ability to negotiate the best value from the bargain suffers as a result. The same scenario would apply to a transportation supplier's ability to position itself in future, rather than ongoing, negotiations with the Postal Service, based on what the supplier knows, or believes it knows, about what the Postal Service is willing to pay.

Harm: Public disclosure of the competitive product volume or operational data in library references USPS-LR-N2022-1-NP3 and USPS-LR-N2021-2-NP4 would be used by competitors of the Postal Service to the detriment of the Postal Service.

Hypothetical: A competitor's representative obtains access to the data in Library Reference USPS-LR-N2022-1-NP3 and/or USPS-LR-N2021-2-NP4. It analyzes the data to assess the nature and scale of that portion of the Postal Service's competitive product business originating in a particular market in which

that competitor operates or seeks to operate. Based upon these data, the competitor assesses the extent to which it wishes to adjust its product offerings, prices, operations and marketing activities to compete for the volume represented by these data. That competitor gains valuable market intelligence without having to make an investment in research. The competitor then can tailor marketing and/or pricing campaigns to acquire customers' business with the consequent loss of volume, revenue and market share to the Postal Service, which has no similar ability to access data regarding its competitors' expedited package volumes.

Harm: Public disclosure of the customer behavior information in Library References USPS-LR-N2022-1-NP1 and USPS-LR-N2022-1-NP2 would be used by competitors of the Postal Service to the detriment of the Postal Service.

Hypothetical: A competitor's representative obtains access to data in Library References USPS-LR-N2022-1-NP1 and USPS-LR-N2022-1-NP2, which analyze data to roughly assess the nature and scale of the Postal Service's package market and the shipping tendencies and preferences of commercial shippers in which that competitor operates or seeks to operate. Based upon these data, the competitor assesses the extent to which it wishes to adjust its product offerings, prices, operations and marketing activities to compete for the volume represented by these data and to take advantage of the customer behavior information disclosed in the library reference. The competitor then can tailor marketing and/or pricing campaigns to acquire customers' business with the consequent loss of volume, revenue, and market share to the Postal Service. Additionally, that competitor can gain valuable market research without having to make an investment in research while the Postal Service bears the burden of procuring the research.

Harm: Public disclosure of the competitive product volume or operational data in library references USPS-LR-N2022-1-NP3 and USPS-LR-N2021-2-NP4 would be used by competitors of the Postal Service to the detriment of the Postal Service.

Hypothetical: A competitor's representative gains access to data and information in Library References USPS-LR-N2022-1-NP3 which includes data and statistics for products that would provide competitors with valuable information, enabling them to better understand the Postal Service's cost structures, operational capabilities, and pricing and marketing strategies. This confidential information includes per-piece costs in several analytical categories (attributable costs, volume variable costs, and product-specific costs), as well as cost contribution and cost coverage (margin) by product. Such information would be extremely valuable to competitors in assessing the strengths and weaknesses of various postal products. Armed with detailed product cost information, competitors would be able to better identify and understand areas where they could adapt their own operations to be more competitive with postal products and better assess how to price and market their own products in such a way as to target the Postal Service's weaknesses and compensate for its strengths in producing and marketing various products. Furthermore, information contained in the various sub-reports, workpapers, and other documentation that feed these reports would provide an even more refined knowledge of the Postal Service's costs, cost structures, and capabilities.

Harm: Potential future bidders could use information provided about ongoing estimates of unit costs to learn commercially-sensitive details about the current supplier, and use that information in future bidding to undercut the current supplier.

Hypothetical: A potential supplier other than the current provider learns non-public details about the estimates of unit pricing by that provider by examining the cost worksheets filed in this docket. This information can be used in future bids to allow the

potential supplier to submit a proposal that compares more favorably relative to its rival, based directly on commercially-sensitive information obtained from costing information furnished in this docket, thereby causing competitive harm.

Harm: Potential competitors of a Postal Service market research supplier could mimic the methodology it uses for calculating estimations of market shares.

Hypothetical: A potential supplier other than the current provider furnishing market research in this docket learns non-public details about the methodology employed by the current supplier. This information can be used to mimic the work product of its rival, thereby causing it competitive harm. Access to the information would allow the rival to unfairly benefit from the current provider's development of the proprietary methodology.

(6) The extent of protection from public disclosure deemed to be necessary.

The Postal Service maintains that the portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant markets for air and surface transportation and competitive delivery products, including persons acting on behalf of the respective subjects of the non-public information, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service should not be provided access to the non-public materials.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless otherwise

provided by the Commission. 39 C.F.R. § 3011.401(a). The Postal Service seeks full protection during this time period and thereafter.

(8) Any other factors or reasons relevant to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Anthony F. Alverno
Chief Counsel
Global Business & Service Development

Christopher M. O'Connell
Andrew L. Pigott
C. Dennis Southard IV
Attorneys

475 L'Enfant Plaza, SW
Washington, DC 20260-1135
dennis.southard@usps.gov
(202) 268-6284
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